brake was the proximate cause of the injury, and the rate of speed too high for an unsound brake was due to the engineer's negligence; and that the plaintiff was guilty of contributory negligence by remaining at work after he knew of the condition of the brake. Wheeler, J., denied the motion (In *Young* v. *New Jersey Ry. Co.*, 46 Fed. Rep. 160), considering that it could not be assumed as a matter of law that the plaintiff was guilty of negligence in remaining at work after knowledge of a defect whose repair had been directed. Whether he was negligent in fact or not had been established by the decision of the jury; and similarly the question of proximate cause was ordinarily for the jury. Their verdict found that both the speed and brake were proximate causes of the injury, consequently the engineer and defendant company were joint wrong doers, and were jointly and severally liable.

Insolvency—Discharge of Foreign Creditors—Stirn et al. v. *McQuade et al.*, 22 At. R. 451. The defendants, residents of New Hampshire, were adjudged insolvent, and notice of the assignment was sent to the plaintiffs, who resided in New York. The latter, however, took no part in the proceedings, and some time after the settlement brought suit for the amount of their claim. The court says: "It is settled that the insolvent law of one State has no effect in another State against the citizens of the latter holding claims which follow the person of the creditor unless they place themselves under the jurisdiction of the law by voluntarily becoming parties to the insolvency proceedings. The question presented is whether a discharge in insolvency granted by an insolvent court of this State to one of its own citizens is a bar to an action brought by a citizen of another State in the courts of this State. As the insolvency court of this State had no jurisdiction over the plaintiffs as citizens of New York, the discharge granted to the defendants was inoperative as to the plaintiffs, and cannot be pleaded as a discharge of their claim. The plaintiffs' debt not being extinguished, they have an equal right to enforce the payment of it by suit in the courts of this State with other citizens having claims to be enforced."

Telegraph Companies — Failure to Deliver Message — Mental Anguish.—The Supreme Court of Mississippi, in *Western Union Telegraph Co.* v. *Rogers*, 9 South. Rep. 823, has decided that a telegraph company is not liable in damages for the mental anguish inflicted on the receiver of a message announcing the death of a relative, and the time and place of burial, when such message, by

the negligence of the company's agent, is not delivered in time for him to attend the funeral. The court disapproves the doctrine laid down in the So Relle Case, 55 Tex. 308—followed by the courts of Alabama, Indiana, Kentucky, and Tennessee—that, in such cases, damages may be recovered for the mental anguish. Cooper, J. says: "We are unwilling to depart from the long-established and almost universal rule of law that no action lies for the recovery of damages for mere mental suffering, disconnected from physical injury, and not the result of the willful wrong of the defendant. That such damages are recoverable in actions for breach of contract of marriage is well settled; but it is equally true that until recent years this action stood as the marked and single exception in which such damages were recoverable in actions for breach of contract."

Evidence—Parol to Vary Writing.—A peculiar case of admissibility of parol testimony to vary the terms of a written instrument arose in the case of *Evans* v. *Duncan*, 48 N. W. Rep. 922, decided by the Supreme Court of Iowa. Defendant executed a warranty deed to plaintiff and this suit was brought upon alleged breaches of the covenants. On the trial defendant undertook to show that in reality the sale was by parol agreement with C., and that C. agreed to pay the encumbrances as part of the purchase price. It was also alleged by defendant that plaintiff's name was inserted as grantee merely to secure him for the purchase price advanced to C., and that he received the deed with knowledge of, and subject to, C.'s agreement to pay the encumbrances. The question then arises, is this testimony admissible as against the deed. The court held that although the case is unlike any to which they have been referred, inasmuch as the parol agreement set up is with one other than the grantee, still, "the deed is absolute and unlimited, both as to the grantee and covenants of warranty," and that whatever his rights are as between him and C., the parol agreement between them is not admissible to contradict the terms in the deed.

Specific performance of Oral Contract for conveyance of land where the deed is deficient in quantity conveyed.—In *McDonald* v. *Youngbluth* (46 Fed. Rep. 836, U. S. Circuit Court, S. D. Ohio.) there had been an oral contract for the conveyance of land. The consideration which had passed consisted in the payment of certain notes upon which the complainants were already liable as indorsers prior to the oral agreement. The deed accepted in confidence without scrutiny was found afterwards to have conveyed a smaller quantity